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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 927 47

A. Y. OATES and his wife,
ALMENA OATES,
Petitioners,
versus
NEW YORK LIFE INSURANCE
COMPANY, a corporation,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida is reported:

Oates et ux v. New York Life Insurance Company, 144 Fla. 744, 198 So. 681.

By its opinion, the Court held that the petitioners, A. Y. Oates and Almena Oates, were estopped to assert the alleged invalidity of the mortgage, executed by them, which was the subject matter of the suit. The Court held that it had on the fourth appeal in the case, *New York Life Insurance Company v. Oates,* 141 Fla. 164, 192 So. 637, determined the questions in the case contrary to the contentions of the Petitioners.

STATEMENT OF THE CASE

The facts in the case are stated by the Petitioners (R. 7-18) and in the opinions rendered by the Supreme Court of Florida on the second, fourth and fifth appeals in the case:

New York Life Insurance Company v. Oates, 122 Fla. 540, 166 So. 269;

New York Life Insurance Company v. Oates, 141 Fla. 164, 192 So. 637;

Oates v. New York Life Insurance Company, 144 Fla. 744, 198 So. 681.

But in the interest of clarity, we make the following brief summary of the facts:

In 1926, Oates and his wife gave Telfair Stockton & Company a mortgage on certain real property in Lakeland, Florida, securing a loan of $15,000.00. The mortgage was duly recorded and thereafter, for value and before maturity, it was assigned to Respondent, New York Life Insurance Company.

Following defaults, the Respondent, some four years after the note and mortgage had been given, filed suit to foreclose the mortgage. Thereupon Petitioners asserted that the mortgage was void, because, so it was alleged, the mortgaged property was the homestead of the Petitioners, and Almena Oates did not personally appear before the Notary who certified (on the mortgage) that she personally appeared before him and acknowledged the execution of the mortgage.

In the litigation, it developed that A. Y. Oates took the mortgage and had his wife sign it and the note which it secured. Subsequently, he returned the note and mortgage to the mortgagee, duly signed, witnessed and acknowledged.

He was paid the proceeds of the loan and delivered the note and mortgage, which were regular on their faces in all respects. But after the mortgage had been recorded and assigned to the Respondent, and some four years after the execution thereof, the Petitioners asserted in the foreclosure proceedings that the mortgage was void as aforesaid. They admitted that they both signed the note and mortgage, but they claimed that A. Y. Oates had the Notary certify the acknowledgment in the absence of Almena Oates.

Neither the mortgagee nor its assignee knew of the alleged defect in the mortgage until the point was made in the litigation (122 Fla. *text* 543-50; 141 Fla. *text* 167-71). Respondent is a *bona fide* purchaser for value.

In the first instance, the Chancellor (trial court) decreed that the mortgage was valid. This decree was reversed on appeal, because the Chancellor erroneously struck certain evidence (R. 138). On the second appeal in the case, a decree adjudicating the invalidity of the mortgage was reversed and the cause remanded for further consideration and disposition (R. 139). On the third appeal, a decree sustaining the mortgage was reversed, because the issue of estoppel had not been adjudicated and with directions to adjudicate it (R. 139). Upon remand, the Chancellor decreed that Petitioners were not estopped; and on the fourth appeal this decree was reversed, the Court holding (R. 116, 141-2) that the Petitioners were estopped in law from asserting the alleged invalidity of the mortgage. On the fourth appeal, the Court expressly directed that an appropriate decree be rendered for the plaintiff (R. 126, 142). Upon remand decree of foreclosure was entered, notwithstanding the objections of the Petitioners that the decision of the Supreme Court of Florida on the fourth appeal (R. 116) was void and violative of their constitutional rights (R. 128).

Appeal was prosecuted from the last mentioned decree,

and as shown by the opinion of the Supreme Court of Florida (R. 138, 144) the Petitioners asserted:

(1) The "law of the case" had been settled on the third appeal and the Court was powerless to change it on the fourth appeal; and

(2) Petitioners had acquired vested rights under the decision on the third appeal and had been deprived of them by the decision on the fourth appeal "without due process of law."

But the Court held that "the law of the case" had not been settled on the third appeal, and that Petitioners had not been deprived of any vested right without due process of law (R. 138-44).

Thereupon, petition for writ of certiorari was filed in this Court and as reasons for allowance of the writ, Petitioners assert that property rights of Almena Oates have been denied her contrary to the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 5, 19, 25-26). Along with the argument that the Supreme Court of Florida settled "the law of the case" on the third appeal and was powerless to change it on the fourth appeal (R. 31-32) Petitioners apparently assert that as Almena Oates did not personally appear before the Notary and acknowledge the mortgage in accordance with the formalities prescribed by Florida law, the decision of the Supreme Court of Florida deprives them of their property without due process of law (R. 29-32).

ARGUMENT

Our argument in opposition to the petition may be briefly summarized as follows:

I. The Court should not assume jurisdiction because the Supreme Court of Florida did not decide a federal question of substance not theretofore determined by this Court,

or in a way probably not in accord with applicable decisions of this Court.

II. The only propositions decided by the Supreme Court of Florida were: (a) Petitioners having admittedly signed and delivered the note and mortgage which were fair and regular upon their faces, and the mortgage having been duly recorded and assigned to a *bona fide* purchaser for value, they were estopped under the common law of Florida from impeaching the validity of the mortgage by the claim that it was not properly acknowledged by the wife, Almena Oates; and, (b) the Court had not upon the third appeal in the case settled "the law of the case" favorably to Petitioners and was free on the fourth appeal to hold, as it did, that Petitioners were estopped to assert the alleged invalidity of the mortgage.

Obviously, no federal question of substance is involved, and the decision of the Supreme Court of Florida on the local law of Florida is final.

POINT I

There is No Federal Question of Substance Involved

The chief contention of Petitioners appears to be that on the third appeal in this case, the Supreme Court of Florida decided "the law of the case" favorably to them, and, therefore, was powerless on the fourth appeal to change its decision and hold that Petitioners were estopped to assert the alleged invalidity of the mortgage. They say that "the law of the case" was changed on the fourth appeal, and, so they claim, they were deprived of property rights without "due process of law" (R. 26, 27, 31-32).

Sufficient answer to these contentions is found in the decision of the Supreme Court of Florida on the fifth appeal. Thus, the Court construed its opinion on the *third* appeal as not having settled "the law of the case," and held that

Petitioners had no vested rights in the decision of the Court on the third appeal, saying (R. 139, 144):

> "On the third appeal from a final decree for the plaintiff, the opinion discussed the evidence and the law; and, as it appeared that though the Chancellor had discussed the evidence and made findings on the question of estoppel, he had not *adjudicated* the issue of estoppel; and as this Court has only appellate jurisdiction in chancery matters, the Court would not anticipate a *decision* of the Chancellor on the issue of estoppel; and at the conclusion of the discussion in the opinion this Court rendered its appellate decree as follows:
>
> " 'The decree of the Chancellor is reversed with directions to adjudicate the question of estoppel as the same is involved against Mrs. Oates, and in so doing determine whether the evidence discloses in this case that by her words or deed she authorized her husband to cause the certificate of acknowledgment to be made out in her absence to the end that a loan, as set forth in the instrument, might be procured from the mortgagee. Reversed.' Oates v. New York Life Ins. Co., 130 Fla., 851, 178 So. 570. * * *
>
> "It is our conclusion that 'the law of the case' was not settled by the opinion of Mr. Justice Ellis and adopted by this Court on the third appeal, but on the other hand, 'the law of the case' was settled and fully determined by this Court on the fourth appeal as reported in 141 Fla. 164, 192 So. 637. We are unable to appreciate the contention that a vested right was acquired under the law as enunciated by this Court in the third appeal so as to deprive them of fundamental rights. See King v. State of West Virginia, 216 U. S. 92, 30 Sup. Ct. 225, 54 L. Ed. 396; Moss v. Ramey, 239 U. S. 538, 36 Sup. Ct. 183, 60 L. Ed. 425; Rooker v. Fidelity Trust Co., 261 U. S. 114, 43 Sup. Ct. 288, 67 L. Ed. 556."

Furthermore, the Petitioners have no right to make complaint in this Court that the Supreme Court of Florida changed or modified its decision on a prior appeal in the case. The state court is the final judge of its power to change or modify its decision; and there is nothing in the Constitution of the United States which confers upon a litigant a vested right in a decision, or to prevent a state court, while the case is still before it, from modifying or changing a prior decision in the case:

> *King v. State of West Virginia,* 216 U. S. 92, *text* 100-01;
>
> *Moss v. Ramey,* 239 U. S. 538, *text* 546-47;
>
> *Wichita Royalty Co. v. City National Bank of Wichita Falls,* 306 U. S. 103, *text* 107.

As held by this Court in *King v. State of West Virginia,* supra, the phrase "the law of the case" "expresses only the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." In one of its most recent decisions upon the subject, the Supreme Court of Florida said, *Higbee v. Housing Authority of Jacksonville,* 143 Fla. 560, 197 So. 479, *text* 482:

> "The law of the case is the question of law decided on appeal to courts of ultimate resort and must govern in the same courts and trial courts *and will seldom be reconsidered or reversed.* See McGregor v. Provident Trust Co., 119 Fla. 718, 162 So. 323; Lincoln Fire Ins. Co. v. Lilleback, 130 Fla. 635, 178 So. 394." (Italics supplied).

Thus, while the Supreme Court of Florida will "seldom" reconsider or reverse a question of law decided on a prior appeal in a case, yet it is free to do so in an appropriate case.

And so it appears that the chief point raised by Petitioners relates to a question of local procedure, as to which the Supreme Court of Florida is the final judge. Therefore, it is submitted, no federal question of substance, if any at all, is shown by the record, and this Court should refuse to assume jurisdiction. *Rule 38.*

POINT II

The Decision that Petitioners were Estopped to Assert the Alleged Invalidity of the Mortgage was upon a Question of Local Law and the Decision of the Supreme Court of Florida is Final.

As a reason for allowance of the writ, Petitioners assert that there is involved a question of importance relating to the property rights of a married woman under the laws of Florida (R. 4). In effect, they say that under the Constitution and laws of Florida, the acknowledgment of a mortgage by a married woman is essential to its validity (R. 23, 20-31).

This argument overlooks the holding of the Supreme Court of Florida on the second, fourth and fifth appeals (R. 54-56; 118-19; R. 140-42) in this case that a married woman, like any other person, may be estopped; that the doctrine of estoppel is a part of the common law of Florida, and that its application in a proper case is consistent with the constitution and statutes of Florida:

New York Life Insurance Company v. Oates, supra;

New York Life Insurance Company v. Oates, supra;

Oates v. New York Life Insurance Company, supra.

As to these matters the Court said (R. 118):

> " 'A married woman in proper cases may be estopped by her conduct concerning the execution or acknowledg-

ment of instruments affecting real estate in which she is interested. See Maiben v. Bobs, 6 Fla. 381; Hobbs v. Frazier, 61 Fla. 611, 55 So. 848; Ponce de Leon Fountain of Youth Co. v. Day, 90 Fla. 197, 105 So. 814; Phillips v. Lowenstein, 91 Fla. 89, 107 So. 350; Mexican Rubber Co. v. Ackley, 101 Fla. 552, 134 So. 585; Kansas City Life Ins. Co. v. Harroun, 44 Idaho 643, 258 Pac. 929; Ehle v. Looker, 182 Mich. 248; Hamling v. Aetna Life Ins. Co., 34 F. (2d) 112' (text p. 558).

"The doctrine of estoppel was administered by the courts at common law. See Doe v. Cropper, 10 Adolph. & Ellis 90; Savage v. Foster, 9 Mod. Reports 35. Its proper application is not violative of, but is consistent with, the constitution and statutes of Florida.

" 'The doctrine of estoppel is a part of the common law that is in force in this state and it should be appropriately applied when the facts in a litigated case justify it.' State v. Greer, 88 Fla. 249, 102 So. 739, 37 A. L. R. 1398."

So much of the facts as are here material were found by the Court as follows (R. 121-22):

"The husband solicited the loan from the mortgagee company. There is testimony that the husband said he would have the mortgage duly executed and acknowledged before an officer other than the notary in the mortgagee's office. When the husband presented the note and mortgage, the wife willingly signed and delivered them to the husband as she had done in many previous instances. Under the statute the husband has the care and management of the wife's property. The husband had the acknowledgment certificate executed by the official when the wife had never appeared before the officer to make the acknowledgment. The mortgagee had no cause to suspect or doubt the regularity and validity of the execution and acknowledgment of the mortgage. The mortgage was recorded with every appearance of due execution and acknowledgment. The

note and mortgage were assigned in due course before maturity to plaintiff for full value without anything to suggest any irregularity or invalidity of the mortgage that was legal on its face and duly recorded. Payments were made on the mortgage debt and then there was default in payments after the mortgage had been assigned to the plaintiff."

The Court also found that the wife customarily signed and delivered to her husband papers of a like nature, and that the note and mortgage showed that a loan was contemplated (R. 122-23). Upon these undisputed facts, the Court found that the wife, Almena Oates, was estopped, saying (R. 123-24, 125, 140, 141):

"Under the circumstances shown, the wife is, by her conduct in signing and delivering the mortgage to her husband thereby enabling him to make the mortgage effective, estopped in law to impeach the validity of the official certificate of acknowledgment that is legal on its face as a full compliance with the requirements of the constitution and the statutes in the execution of mortgages of homestead real estate and of her interest in the real property held by the entireties."

"This merely estops the wife from claiming against the mortgage and leaves the mortgage as it was delivered and recorded, being on its face a complete compliance with the requirements of the constitution and statutes in the premises. The constitution is not violated. Both the husband and the wife signed the mortgage, thereby joining in its execution as required by the constitution. The mortgage is on its face executed and acknowledged, as required by the statute. The wife's conduct in willingly signing and delivering the mortgage to her husband enabled him to have the requisite official certificate to acknowledgment affixed to the mortgage in her absence; and on the evidence in this case the law imputes to the wife knowledge that the mortgage she had signed and delivered was in-

tended by her husband to be made effective under the law as security for a loan. * * *

"The plaintiff is the assignee for full value of the note and mortgage and is entitled to the rights the law accords to a *bona fide* assignee without notice of any latent defect in the apparently duly executed and acknowledged mortgage as shown by the mortgage and by the record of it. See McClure v. American Nat-Bank, 67 Fla. 32, 64 So. 427; Reasoner v. Fisikelli, 114 Fla. 102, 153 So. 98."

The quoted excerpts conclusively show that the Supreme Court of Florida decided only questions of local law, and as to such questions its decision is final:

West v. American Telephone & Telegraph Co., —— U. S. ——, 85 L. Ed. 146 (advance sheet);

Erie Railroad Company v. Tompkins, 304 U. S. 64;

Chouteau v. Gibson, 111 U. S. 200.

In fact there is no federal question involved.

CONCLUSION

It is respectfully submitted that the petition ought to be denied.

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